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Federal Communications Commission

DA 98-51

DISPATCH

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Tylertown, Mississippi)

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MM Docket No. 97-45
RM-8961

REPORT AND ORDER

(Proceeding Terminated)

Adopted: January 7, 1998

Released: January 16, 1998

By the Chief, Allocations Branch:

1. At the request of TRL Broadcasting Company ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 12 FCC Rcd 139 (1997) proposing the allotment of Channel 297A to Tylertown, Mississippi, as the community's second local FM service. Petitioner and Guaranty Broadcasting Corporation ("Guaranty"), licensee of Station WBBU(FM), Baker, Louisiana, filed comments.¹ Petitioner filed reply comments.

2. Guaranty filed comments noting its has simultaneously filed applications with the Audio Services Division requesting the upgrade of Station WBBU's facilities from Class A to Class C3.² It also states that Pearl Broadcasting Corporation, a wholly-owned subsidiary of Guaranty, the licensee of Station WHMD(FM), Hammond, Louisiana, has filed an application

¹ Informal comments were filed by Carolyn Dillon ("Dillon") President, Tylertown Broadcasting Company, licensee of AM/FM Station WTYL, Tylertown, Mississippi. However, Dillon's comments were not served on the petitioner, in violation of Section 1.420 of the Commission's Rules. See also paragraph 4 of the Appendix to the Notice. Consequently, Dillon's comments constitute an ex parte presentation and will not be considered herein. See Section 1.1200 of the Commission's Rules.

² Guaranty also raises several allegations regarding petitioner's motivation in filing this petition for rule making. In this regard, Guaranty states that it "has good reason to believe" that the rule making proposal has been initiated by or on behalf of Roy E. Henderson. Guaranty submits a statement by Randy W. Kendrick, Guaranty's Treasurer. Kendrick states that Henderson specifically advised Guaranty that (1) he was applying for the Tylertown allotment; (2) that the allotment would prevent Guaranty from upgrading Station WBBU's facilities; and (3) that he would not go forward with the allotment if he could obtain Radio Station KCIL(FM), Houma, Louisiana, at a substantially reduced purchase price. There is nothing in the record of this docket beyond the speculation of Guaranty that would suggest that the petitioner will not apply for Channel 297A allotment at Tylertown, or that Henderson is the real party of interest. This docket is not the appropriate forum to resolve any issue pertaining to Henderson. See Monterey, Tennessee and Monticello, Kentucky, 7 FCC Rcd 1606 (1992).

to relocate its transmitter site to accommodate Station WBBU's upgrade. Guaranty's application to upgrade WBBU's facilities is mutually exclusive with petitioner's proposal to allot Channel 297A at Tylertown. In support of its proposal, Guaranty states that the proposed upgrade at Baker outweighs any perceived benefits advanced by the Tylertown allotment. Guaranty notes that Station WBBU is the only radio service assigned to Baker, whereas Tylertown is already well served by two radio stations. Moreover, Guaranty states that Station WBBU's upgrade would provide new service to 77,425 people, while the Tylertown allotment would provide new service to only 39,710 people. We are allotting Channel 297A to Tylertown for two reasons.

3. First of all, under normal processing procedures, a conflicting one-step upgrade application filed by the comment date in a rule making proceeding would be processed as a counterproposal in that proceeding. However, we are not accepting the proposal filed by Guaranty for a upgrade of Station WBBU's facilities as a counterproposal in this proceeding because it is contingent upon Station WHMD at Hammond, Louisiana, changing its transmitter site. Although Guaranty simultaneously filed applications for both Station WBBU's upgrade and Station WHMD's change of site, the upgrade at Baker is mutually exclusive with the present site authorized for Station WHMD, thus making Guaranty's proposal to upgrade contingent upon a favorable disposition of WHMD's application. The Commission does not provide for the acceptance of contingency proposals elsewhere based on speculative results. See Oxford and New Albany, Mississippi, 3 FCC Rcd 615 (1988); recon. denied, 3 FCC Rcd 6626 (1988).³

4. Second, allotting Channel 297A to Tylertown is consistent with our FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).⁴ Under priority (4), a Channel 297A allotment at Tylertown as a new service would be preferable to the Guaranty proposal to upgrade an existing facility. See Benton, El Dorado, Hampton, Harrison, Mena and Sherwood, Arkansas; Homer, Louisiana; Salisaw and Vinita, Oklahoma; and Hooks and Hilgore, Texas, 2 FCC Rcd 1963 (1987).

5. Based on the above, we believe the public interest will be served by the allotment of a new service to Tylertown. Channel 297A can be allotted to Tylertown in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.3 kilometers (3.3 miles) southeast in order to avoid short-spacing conflicts with the licensed operation of Station WBBU (FM), Channel 297A, Baker, Louisiana, and Station WKXI (FM), Channel 298C1, Magee, Mississippi.⁵

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and

³ In an attempt to accommodate Guaranty's application, the engineering staff performed an engineering analysis to determine if an alternate channel was available for allotment at Tylertown. Our analysis shows that there is no alternate channel or alternate site. Our concerns about dismissing Guaranty's proposal to upgrade the only FM station at Baker are mitigated by the fact that the community is well served by numerous neighboring stations.

⁴ The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3)].

⁵ The coordinates for Channel 297A at Tylertown are 31-05-27 NL and 90-05-47 WL.

(r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 2, 1998, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Tylertown, Mississippi	249A, 297A

7. A filing window for Channel 297A at Tylertown, Mississippi, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau